IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1479 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRUSHNADASJI DISIPLE OF HARIVANSDASJI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR. H.C.PATEL, WITH MR.SUNIL C PATEL for Appellant,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 27/09/2007

ORAL JUDGMENT

The appellant is the original accused No.1 of Sessions Case No.162 of 2002 decided alongwith Sessions Case No.91 of 2003 by the learned Additional Sessions Judge and 2nd Fast Track Court, Rajkot on 10th

October, 2003 whereby the appellant-accused has been charged and tried for the offence punishable under Sections 489 (B) and 489 (C) of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default of making payment of amount of fine to undergo six months rigorous imprisonment for the offence punishable under Section 489 (B) of the Indian Penal Code. Whereas, for the offence punishable under Section 489 (C) of the Indian Penal Code the appellant-accused is ordered to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo three months rigorous imprisonment. All the sentences are ordered to be run concurrently.

2. The judgment and order of conviction and sentence has been assailed on various grounds which are mentioned in the memo of the appeal. Mr.H.C.Patel, learned Advocate for the appellant has also made submission. To appreciate the rival side submissions, it is necessary to state the basic facts of the prosecution that was placed before the learned trial Judge.

3. According to case of prosecution, on the date of incident, the Police had received an information that one priest is likely to come with fake currency notes and therefore the Police had arranged a trap and the Police found that the information received is correct. The person described in the information was coming and intercepted. Upon making inquiry and on search carried out in presence of the Panchas, the Raiding Officer found 20 fake currency notes in the denomination of Rs.100/-. The appellant-accused was arrested forthwith and during the interrogation the Police found that the currency notes were given to the present appellant by one Minaben, wife of Natwarlal Bhatt. The Police thereafter able to reach to Minaben and she also came to be arrested and interrogated. It is alleged that the Police got a clue from Minaben during her interrogation and found her brother-Narendra Umiyashankar Joshi had handed over these currency notes to her and in turn they were given to the accused. The Police was not able arrest that Narendra Joshi but as the evidence against the present appellant and Minaben being adequate both of them were charge-sheeted. However, after sometime the Police was able to locate the absconding accused-

Narendra and then he was arrested and charge-sheeted. As all the three accused persons were arrested for the similar registered offence, all of them were tried together but as the date of arrest and commission of the respective Sessions Case being different, two Sessions Case were registered, but they have been disposed of by common judgment.

4. The learned trial Judge on evaluation of evidence decided to acquit Minaben, original accused No.2 of Sessions Case No.162 of 2002 and original accused-Narendra Joshi of Sessions Case No.91 of 2003. However, the present appellant is convicted and sentenced as aforesaid as he was found with possession of the fake currency notes.

5. Mr.Patel, learned Advocate for the appellant and Ms.Pandit, ld. A.P.P. has taken this Court through the oral as well as documentary evidence and mainly the evidence of the Police Witnesses vis-a-vis the Panchnama of arrest and Panchnama of recovery of 20 fake currency notes. On close reading of the Panchnama (Exh.17), it is clear that about three to four currency notes were having similar numbers and the numbers have been mentioned in the Panchnama.

6. After some deliberation and in response of the query raised by this Court, Mr.Patel has fairly submitted that he may not press this appeal so far as the conviction is concerned but this Court should at least reduce the substantive punishment imposed by the learned trial Judge because this is not a grave case. Only 20 fake currency notes were found and there were circumstance on record to show that the present appellant-accused may be the victim of the persons indulging in large circulation of fake currency notes. Ultimately, he was not caught when he had attempted to encash any the fake currency notes. He had just reached the Pan Shop and upon his arrival to Pan Shop, as per information received he was intercepted and arrested.

7. Mr.Patel, learned Advocate has drawn attention of this Court that this Court to one decision that this Court while dealing with the case of ***Baldevbhai Gelabhai Prajpati Vs. State of Gujarat, decided on 18th September, 2007 in Criminal Appeal No.1411 of 2003***, has decided to reduce the quantum of punishment from seven years to five years without

altering the punishment of fine and in default punishment. In that case the currency notes were found more in number than in the present case. It would be convenient to reproduce the relevant part of the judgment where the reasons have been assigned for reducing the substantive period of sentence.

> *"The appellant-accused No.1 in the present case was found fake currency notes were of Rs.1,60,000/-, it cannot be said to be big stock. It is also relevant to note that the police has not successfully proved the crime or found in the crime committed by the appellant-accused No.1 that he was also concerning with the carving out counterfeit notes meaning thereby actual manufacturing process etc. It is very likely to note that he might have been uses by the bosses dealing in the activities of circulating fake currency notes in the economy otherwise the appellant - accused No.1 could have reached to larger number of currency notes. The scope of punishment imposed by the learned trial Judge for the offence punishable under Section 489 (C) is of five years, so for both these offences, five years R.I. would have been imposed then it also may have served the purpose. Ultimately, the quantum of punishment should be of the nature, which can carry the message of deterence in the society. It was not the case that the appellant is an habitual and that offence of similar nature is even pending, he was caught in the present crime.*

The Court should keep the concept of the reformation of an individual in mind while imposing punishment. If the appellant was a victim then he can be given some opportunity to improve himself and in present case since long he is in jail. So, if the substantive sentence imposed for the offence punishable under Section 489 (B) is reduced to five years accepting the submissions of Mr.Japee, it would be just and proper. It is not the case of the prosecution that on the date of offence, the appellant-accused was an habitual and no such other or similar cases were pending against him. So more leniency can be shown to the appellant. Therefore, accepting the say of Mr.Japee, the quantum of punishment imposed by the learned trial Judge requires to be altered."

8. According to Ms.Pandit, learned A.P.P. this is an economic offence. The accused on one hand is claiming that he is renouncing the world and on the other hand he was found indulging in such serious offence. But as the number of fake currency notes are comparatively not more, found from the possession of the accused, the substantive punishment can be reduced to six years from seven years because this Bench has recently done in one case as mentioned aforesaid.

9. So, having considered the rival side submissions and when the appeal against the order of conviction is not challenged by the learned Advocate for the appellant, the alternative argument advanced by him obviously shall have to be accepted. The principle of parity shall have to be applied. The Court should also bear in mind that the accused was intercepted on information and there is ample scope that he may be the victim of the persons indulging in activity of putting fake currency notes in the circulation. So, on account of foolish mistake committed by him perhaps he may have suffered.

10. So, without entering into further discussion the present appeal deserves to be and is accordingly partly allowed. The judgment and order of conviction and sentence of fine passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Rajkot in Sessions Case No.162 of 2002 on 10th October, 2003 for the offence punishable under Section 489 (B) and 489 (C) of the Indian Penal Code is hereby confirmed. The sentence imposed for non-payment of amount of fine is also confirmed.

10.1 While confirming the sentence punishable

under Section 489 (C) of the Indian Penal Code, the sentence punishable under Section 489 (B) of the Indian Penal Code is hereby altered and reduced to six years instead of seven years rigorous imprisonment. If the appellant has served the sentence then appellant be set at liberty forthwith, if not required for any other purpose or in any other case. Order and Direction accordingly. The Registry is directed to send the writ of this Farad, forthwith, to the Jail Authorities where the appellant is at present serving the sentence.

(C.K.BUCH, J.)

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